IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 263 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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HIMATLAL LALLUBHAI MEHTA - Applicant(s)
Versus
DAHYALAL SURAJMAL PARIKH & 1 - Respondent(s)

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Appearance :
MR NS DESAI for Applicant(s) : 1,
MR MEHUL H RATHOD for Respondent(s) : 1,
MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/11/2006

ORAL JUDGMENT

1. This litigation has travelled a long journey from the date of the alleged offences and created a chequered history of one after the other inexplicable orders. Even before this

court, after the petition being admitted with a one-word order “RULE” on 28.6.1994, it appears to have been dismissed for default and then, after a number of adjournments in the miscellaneous application filed for restoration, being MCA No.5220 of 1998 filed in December 1998, the petition has been restored in the year 1999 and again the hearing has been adjourned on a number of occasions on various pleas.

2. The petitioner, original complainant, has sought to challenge the judgment and order dated 16.4.1994 of the learned Additional Sessions Judge, Palanpur, whereby the respondent, original accused, was ordered to be discharged under the provisions of section 245 of the Code of Criminal Procedure, 1973. That impugned order was made in the revision preferred by the respondent-accused challenging framing of charge by the learned Judicial Magistrate, First Class for the offences punishable under sections 408, 477-A and 114 of the Indian Penal Code, 1860.

3. The original complaint of the petitioner herein alleged that, a trustee, who was no more, and the respondent-accused, who was working under that trustee, had committed the alleged offence by not properly accounting for the sale proceeds of Rs.8,343.84 ps. which was received by selling

gram grown on the land belonging to the Trust of which the deceased accused was a trustee at the relevant time. The trial court had, on 1.10.1987, made an order under section 156 (3) of the Cr.P.C. below that complaint for investigation by the police and the report submitted under section 173 of the Cr.P.C. by the police was to the effect that not only no offence was disclosed but the complainant was required to be prosecuted. Disagreeing with that report, the trial court appears to have decided to take cognizance and proceed with the trial for the purpose of which evidence of the complainant was stated to have been recorded and the charges, as aforesaid, came to be framed against the respondent herein. It was clear from the record that the procedure adopted by the trial court was highly improper and the all important deposition of the complainant stated to have been recorded at Exh.24 was missing from the original record. Learned counsel Mr.N.S.Desai, appearing for the petitioner, submitted during the arguments stretching over more than two days that he had a copy of the deposition of the original complainant, but that was not a certified copy and was not available in the court. Therefore, in short, it was not possible to take a view on facts different from the view taken by the revisional court in the impugned order.

4. Without referring to the propriety of the procedure adopted by the trial court, the revisional court has recorded the findings that the police investigation had clearly revealed that the complaint was *male fide* and false, that the ingredients of the offence under section 405 were not made out, particularly in respect of the respondent-accused, insofar as no property or money was ever entrusted to him and there was no question of any misappropriation by him. It was further held that the respondent concerned had neither destroyed nor tampered with any record and the amount alleged to have been misappropriated was in fact invested by the deceased accused and that was also properly accounted for. It appeared from the record that the complainant had, relying upon a diary written by the accused, tried to implicate the respondent with an ulterior motive even as the diary was in his possession for several years. Having regard to the facts and circumstances, it is held in the impugned judgment that the allegations and charges levelled against the accused were *ex facie* unsustainable. However, the revisional court held that the charges framed under section 240 of the Cr.P.C. could not have legally been framed and the accused concerned was required to be discharged under section 245 of the Cr.P.C.

Thus, not only that the trial court had committed serious errors in following the procedure of trial, the revisional court had also compounded the confusion in discharging the respondent-accused.

5. The findings recorded in the impugned judgment after perusal of the record could not be interfered by this court in the second revision application in absence of the main piece of evidence which is missing and of which even a copy is not produced by the petitioner. Even otherwise, it appears that the petitioner has been pursuing the present proceeding with an ulterior motive to harass the respondent. Therefore, in short, this is not a fit case in which the extraordinary revisional jurisdiction of this court could be exercised to interfere with the impugned order. Therefore, the application is rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)